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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/044,685	01/11/2002	Peter Ar-Fu Lam	B7HTAG	9707
7590		11/26/2004	EXAMINER	
Peter Ar-Fu Lam		FIDEI, DAVID		
20104 Wayne Ave.		ART UNIT		
Torrance, CA 90503		PAPER NUMBER		
		3728		

DATE MAILED: 11/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/044,685	LAM, PETER AR-FU	
	Examiner	Art Unit	
	David T. Fidei	3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 10-21 is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☒ Claim(s) 6-9 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 3 and 5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 3, "the terminals" has no antecedent basis.

In claim 5, "the foot print" has no antecedent basis.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by Taff (Patent no. 3,231,159). A garment hanger is disclosed in figures 12 and 13 comprising at least one garment hanger having a suspension member 8 and two arms extending from the opposite directions of the suspension member for supporting a garment.

Member 202, having a display area positioned on top of the supporting arms as shown in figure 12, defines a display tag.

As to claim 2, the display member is trimmed or originally cut to be positioned below the hook as shown in figure 13.

5. Claims 1-4 are rejected under 35 U.S.C. 102(e) as being anticipated by Rahmey (Patent no. 6,209,763). A retail garment hanger package is disclosed in figures 3 and 4 comprising at least one hanger 20 having a suspension member 32 and two supporting arms 22, 24 extending from opposite directions of the suspension member for supporting a garment. Member 60 having a display area positioned on top of the supporting arms defines a display tag.

As to claim 2, the display member is trimmed or originally cut to be positioned below the hook as shown in figure 3.

As to claim 3, the width of the display tag 60 is less than the width of the garment hanger.

As to claim 4, the display tag further comprises a flap defined by folded section 70 having a hole 72, see figure 4.

Allowable Subject Matter

6. Claim 5 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

7. Claims 6-9 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

8. Claims 10-21 are allowed.

Response to Arguments

Applicant's arguments filed June 16, 2004 have been fully considered but they are not entirely persuasive. Claim 1 recites the present invention as follow;

1. (Currently amended) A garment hanger retail package comprising:
at least one garment hanger having a suspension member and two support arms extending from opposite directions of said suspension member for supporting a garment, and a display tag having a display area positioned substantially on top of said supporting arms for displaying sales information related to said garment hanger.

The Examiner realizes it is a fundamental tenet of patent law that the standard for anticipation is one of strict identity. To anticipate a claim for a patent, a single prior art reference must contain all of the elements recited in the claim.

"An anticipation rejection requires a showing that each limitation of a claim must be found in a single reference, practice or device." *In re Donohue*, 766 F.2d 531, 266 USPQ 619, 621 (Fed. Cir. 1985).

"Exclusion of a claimed element from a prior art reference is enough to negate anticipation by that reference." *Atlas Powder Company v. E.I. du Pont De Numours*, 750 F.2d 1569, 1574, 224 USPQ 409, 411 (Fed. Cir. 1984).

However, the law of anticipation does not require that the reference teach what applicant has disclosed, but only that the claims "read on" something disclosed in the reference. See *Kalman v. Kimberly Clark Corp.*, 713 F.2d 760, 281 USPQ 871 (Fed. Cir. 1983). Furthermore, it is only necessary that the reference include structure capable of performing the recited function in order to meet the functional limitations of the claim as a reference must disclose the claimed subject matter expressly or inherently, *Constant v. Advanced Microwave Devices, Inc.*, 7 USPQ2d 1057 (Fed. Cir. 1989).

In the present case a "display area positioned substantially on top of said supporting arms for displaying sales information related to the garment hanger". Applicant argues there are three important evidences that Taff does not provide a display areas substantially on top of the support arms. The examiner disagrees.

First the medial portions of Taff are placed "on top" of the support arms. Actually both sides bent around the medial portions are on top of both sides of the support arms providing no distinction in this capacity. Secondly, the space "on top" of the supporting arms that is used "for"

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advertising space is of no patentable moment.¹ Thirdly, differences between Exhibit A and the prior art of Taff and Rahmey is noted. However, any such differences are irrelevant to the consideration of patentability, as it is the claimed invention that is compared to the prior art. Furthermore, as noted in paragraph 4 of the previous office action, it is incumbent upon the examiner to interpret the claims as broad as possible, not relying upon applicant's specification for guidance unless explicitly directed by the disclosure.

As to the applicant's request under MPEP 707.07(j), this section encourages the examiner to draft claims, where appropriate, for an applicant "where it is apparent that the applicant is unfamiliar with the proper preparation and prosecution of patent applications". From the prosecution history of record, it is not at all apparent that applicant is unfamiliar with the preparation and prosecution of patent applications. Furthermore, the provisions of MPEP 707.07(j)(III) are found in paragraphs 6-8 above. Beyond that the examiner has no further suggestions than those already implemented.

Since the rejections under 35 U.S.C. 103 are overcome by applicant's amendments, the remaining arguments are considered moot

Conclusion

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period


¹ In order to further limit the claim there must be some distinction based upon the intended use recited. "However, in apparatus, article, and composition claims, intended use must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art, see M.P.E.P. § 2111.02 THE INTENDED USE MAY FURTHER LIMIT THE CLAIM IF IT DOES MORE THAN MERELY STATE PURPOSE OR INTENDED USE. The examiner can see no structural differences between the claimed invention and the prior art based upon the intended use recited.

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will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David T. Fidei whose telephone number is (571) 272-4553. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571) 272-4562. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


David T. Fidei
Primary Examiner
Art Unit 3728

dtf
September 23, 2004